RE ERNEST CHEONG YONG YIN,
EX P UNITED MALAYAN BANKING CORPORATION BHD

HIGH COURT MALAYA, KUALA LUMPUR
RK NATHAN JC
[BANKRUPTCY NO: D5-29-220-1996]
23 MAY 1997

BANKRUPTCY: *Notice - Validity of notice - Interest on judgment sum - Claim for shorter period - Claim also not quantified up to date of notice - Whether there was non-compliance with s. 3(1)(i) Bankruptcy Act 1967 - Whether s. 3(1)(i) is subject to s. 6(3) Limitation Act 1953*

CIVIL PROCEDURE: *Interest - Judgment debt - Rate of interest agreed to by parties - Whether time-barred as claim made beyond six years - Whether judgment creditor only allowed maximum rate of 8% after six years - Limitation Act 1953, s. 6(3)*

BANKRUPTCY: *Notice - Validity of notice - Claim for judgment debt - Whether notice included sum which was time-barred - Whether action for recovery of arrears of interest should be made within six years - Whether bankruptcy notice filed past date of limitation rendered invalid - Whether s. 131 Bankruptcy Act 1967 applicable to cure defect - Limitation Act 1953, s. 6(3)*

LIMITATION: *Interest - Arrears - Judgment debt - Action for recovery of arrears of interest - Action taken after six years - Whether time-barred by s. 6(3) Limitation Act 1953 - Whether limitation can be extended by any other Act - Whether bankruptcy notice rendered invalid*

The judgment creditor ('JC') obtained judgment against the judgment debtor ('JD') by way of a summary judgment on 15 October 1987. The JD failed to satisfy the judgment sum and the JC subsequently filed a bankruptcy notice ('BN') on 24 January 1996. The JD applied to strike out the BN and the senior assistant registrar dismissed the application. Hence, the JD's appeal on the ground that the sum included in the BN was excessive as the arrears of interest claimed were time-barred under s. 6(3) of the Limitation Act 1953 ('the Act').

The issues for consideration were: (i) whether the BN would be valid if the JC chose to claim interest for a shorter period and did not quantify the interest up to the date of the BN; (ii) whether the six-year period under s. 6(3) of the Act commenced from the judgment date or from the date the interest became due; (iii) whether the act of recovery of the arrears of interest was well past the date when limitation had set in; and (iv) whether s. 131 of the Bankruptcy Act 1967 was applicable to cure the defects in the BN.

Held:

[1] Notwithstanding the amendments to s. 3(1)(i) of the Bankruptcy Act 1967, the BN is still valid if the JC chooses to claim interest for a shorter period and does not quantify the interest up to the date of the issue of the BN but up to the date of the notice or up till the date of limitation. (p 490 f)

[2] The amendment to s. 3(1)(i) of the Bankruptcy Act 1967 does not appear to have taken into consideration s. 6(3) of the Act nor has it taken into consideration the fact that the JC reserves the right to claim less. (p 490 g)

[3] The limitation of an action shall be governed by the Limitation Act 1953 and cannot be extended by the mere inclusion of the words "up to the date of the bankruptcy notice" in some other Act without reference to the Limitation Act 1953. (p 490 h)

[4] The provisions in s. 3(1)(i) of the Bankruptcy Act 1967 must be read in light of s. 6(3) of the Act. The interest should be claimable only up till the date before limitation sets in, *ie*, six years from the date it becomes due. (p 491 a)

[5] The claim of interest at the rate of interest as agreed to by the parties commencing from the date of default would be time-barred by virtue of s. 6(3) of the Act if claimed six years after the date of commencement. Therefore, where the action for recovery is taken within the limitation period, the JC will be entitled to the higher agreed rate of interest. However, if he takes the action to recover the debt after six years, he will only be allowed the maximum rate of 8% per annum on the principal due. (p 492 a-c)

[6] As the issue on the amount of interest claimable was one of great import, s. 131 of the Bankruptcy Act 1967 could not be used to cure the defect which went to the root of the BN. The act of recovery, *ie*, the issuance of the BN on 24 January 1996 was well past the date when limitation had set in. (p 492 d-e)

[7] The JC could not recover the interest sums of RM106,863.04 and RM72,433.97. As such, the BN was invalid and should be struck out. (p 492 e)

[Appeal allowed.]

Case(s) referred to:

Ghazali Mat Noor v. Southern Bank Bhd & Ors [1989] 2 CLJ 380; [1989] 1 CLJ (Rep) 35 ***(refd)***

Lim Boon Peng v. United Orient Leasing Co Bhd [1991] 1 CLJ 445; [1991] 1 CLJ (Rep) 270 ***(refd)***

Lougher v. Donovan [1948] 2 All ER 11 ***(refd)***

Low Mun v. Chung Khiaw Bank Ltd [1987] 2 CLJ 400; [1987] CLJ (Rep) 172 ***(refd)***

Malaysian Soil Investigation Sdn Bhd v. Emko Holdings Sdn Bhd [1994] 1 CLJ 267 ***(foll)***

Re Ngan Ching Wen, ex p Moscow Narodny Bank Ltd [1996] 2 CLJ 943 ***(refd)***

Re Undoh Asai (Bankruptcy Petition No: K29(P)-96-94) (Unreported) ***(refd)***

Re Yamaha (Malaysia) Sdn Bhd [1990] 3 MLJ 317 ***(refd)***

Rengasamy Pillai v. Comproller of Income Tax [1970] 1 MLJ 233 ***(refd)***

Wee Chow Yong t/a Vienna Music Centre v. Public Finance Bhd [1990] 1 CLJ 176; [1990] 3 CLJ (Rep) 349 ***(refd)***

Legislation referred to:

Bankruptcy Act 1967, ss. 3(1)(i), 131(1)(i)
Companies Act 1965, s. 218
Limitation Act 1953, ss. 2, 6(3)
Rules of the High Court 1980, O. 42 r. 12

For the judgment debtor/appellant - K Sureindhren; M/s SN Yap & Assocs
For the judgment creditor/respondent - Rohaine Mohd Shim; M/s Che Mokhtar & Co

Reported by Usha Thiagarajah

JUDGMENT

RK Nathan JC:

This was an appeal (encl. 8) against the decision of the learned senior assistant registrar (SAR) for dismissing the application (encl. 5) of the judgment debtor (JD) to strike out the bankruptcy notice (BN) dated 24 January 1996. The grounds adduced by the JD are stated in his affidavit (encl. 4) in support of encl. 5.

On 15 October 1987, the judgment creditor (UMBC) obtained a judgment against the JD who was the second defendant in civil suit C4-23-3446-86 by way of summary judgment. The sums adjudged due to UMBC were first, the sum of RM95,864.93 under an overdraft facility with interest thereon at the rate of 15% p.a. with monthly rests from 1 April 1986 until payment and secondly, the sum of RM66,051.74 under the overdue trust receipt account with interest thereon at the rate of 16% p.a. on the sum of RM60,000 from 1 April 1986 until payment. UMBC claimed the sum of RM229,563.68 under the BN and the following particulars were enumerated in the BN to show how the sum of RM229,563.68 was arrived at:

I	Judgment sum	RM 95,864.93
	Plus interest on RM95,864.93 at 15% per annum with monthly rests from 1.4.86 till 24.1.96 (interest stops running after 14.10.93)	RM106,863.04
	Less payment	RM112,000.00
		RM 90,727.97
II	Judgment sum	RM 66,051.74
	Plus interest thereon at the rate of 16% per annum on the sum of RM60,000.00 from 1.4.86 until 24.1.96 (interest stops running after 14.10.93)	RM 72,433.97
III	Costs	RM 350.00
	Outstanding sum as at 24.1.96	RM229,563.68
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There were four pages of further details annexed to the BN to show how the claimed sum of RM229,563.68 was arrived at.

The JD had appealed against the learned SAR's decision on the ground that the sum claimed in the BN is excessive and that UMBC had included a sum totalling RM179,296.01 to which UMBC is not entitled as the same is time-barred. It is the JD's contention that interest claimed offends s. 6(3) of the Limitation Act 1953 (Act 254). Section 6(3) of Act 254 provides as follows:

> An action upon any judgment shall not be brought after the expiration of twelve years from the date on which the judgment became enforceable and no arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due.

There had been several interpretations given to the above subsection. In *Wee Chow Yong t/a Vienna Music Centre v. Public Finance Bhd* [1990] 1 CLJ 176; ([1990] 3 CLJ (Rep) 349), Edgar Joseph Jr J (as his Lordship then was) had occasion to, *inter alia*, interpret sub-s. 6(3) of Act 254. In that case the judgment debtor had also taken the point that the bankruptcy notice grounded upon a judgment dated 13 May 1982 included interest not recoverable under sub-s. 6(3) of Act 254. The learned judge at p. 179 (at p. 353) held as follows:

> A perusal of the judgment upon which the bankruptcy notice was grounded shows that it provides for the payment of interest on the judgment debt 'at the rate of 8% p.a. calculated from 12 March 1982 to date of payment or realisation.'

> The bankruptcy notice was, as I have already noted, issued on 12 May 1988 and served on the debtor on 9 June 1988.
>
> It therefore does include an element of interest recovery which is barred by section 6(3) of the Limitation Act 1953, namely, a trifling sum of interest in respect of a period of just two months. Accordingly, the sum specified in the bankruptcy notice as being due by way of interest exceeds the amount actually due.

In that case the learned judge went on to dismiss the judgment debtor's application as his Lordship considered the above defect as "a mere irregularity which had caused no substantial injustice and so can and should be condoned under s. 131 of our Act (see *Rengasamy Pillai v. Comptroller of Income Tax* [1970] 1 MLJ 233)". UMBC sought to rely on the decision in *Wee Chow Yong* and its counsel submitted that the BN ought not to be invalidated in reliance on s. 131 of the Bankruptcy Act 1967. For the moment, I shall confine this part of my judgment to the interpretation of sub-s. 6(3) of Act 254 and will only deal with the applicability of s. 131 of the Bankruptcy Act in the later part of my judgment.

In *Re Yamaha (Malaysia) Sdn Bhd* [1990] 3 MLJ 317, Siti Norma Yaakob J (as her Ladyship then was) also had occasion to examine s. 6(3) of Act 254. In that case, the judgment was obtained on 19 May 1978 and is made up of (1) the principal sum of $2,947,032.06, (2) 10% interest p.a. on the amounts of the three bills of exchange calculated from 20 October 1977 to date of judgment amounting to $156,089.63, (3) 6% interest due on the principal sum of $2,947,032.06 to be calculated from the date of judgment, that is 19 May 1978, to realisation, and (4) costs at $250. It was contended that the accrued interest prior to 18 April 1981 amounting to $156,089.63, was time-barred under s. 6(3) of the Limitation Act 1953. In choosing 18 April 1981, the applicant, a contributory, had worked the six-year limitation period backwards from the date of the notice of motion dated 18 April 1987, seeking to reverse or vary the decision of the liquidator. In her decision at p. 320, the learned judge held as follows:

> In calculating when time starts to run, I consider that the date of the notice of motion is quite irrelevant. What is more important is the date when judgment was entered as it is from that date that time starts to run for after all, a judgment creditor is expected to enforce a judgment debt forthwith but if he chooses to sit on the judgment and does nothing about it he suffers the consequence of the period of limitation working against his interest.
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> Since the judgment was obtained on 19 May 1978, the six-year limitation period as far as enforcement of arrears of interest is concerned, commences from that date and the plaintiff is entitled to enforce all arrears of interest calculated up to 19 May 1984 and not arrears falling due after that date.

> ... Moreover the effect of bringing the present proceedings is nothing more than to seek enforcement of the judgment obtained in 1978 and to that extent, I consider that section 6(3) is applicable to the facts of this case.

UMBC relied on *Re Yamaha* and submitted that based on that case, the amount of interest claimed in the BN is not time barred nor excessive as it is calculated for a period of six years from the date of judgment. As such, it is UMBC's submission that the BN is proper.

The JD relied on a later case by Hj Abdul Malek bin Hj Ahmad J (as his Lordship then was) wherein his Lordship gave a somewhat different interpretation to sub-s. 6(3) of Act 254. In *Malaysian Soil Investigation Sdn Bhd v. Emko Holdings Sdn Bhd* [1994] 1 CLJ 267, 270, the learned judge held that:

> At first reading, the underlined second limb seems to create the impression that arrears of interest in respect of any judgment debt cannot be repayable after the expiration of six years from the date the interest became due meaning that they can only be paid for the six years after becoming due, which is the basis of learned Counsel for the respondent's contention, but actually this is an erroneous impression and the correct interpretation should be that one cannot take action to recover the arrears of interest AFTER six years had lapsed from the time they became due. The crucial word in the second limb is therefore "after" to denote that any act of recovery of the arrears of interest must be before the limitation period of six years had expired and "recovered" should mean "claimed" and cannot be held to mean "repayable'. In the instant case, the judgment was about two years and three months after it became due and was therefore well within the limitation period. The interpretation given on the erroneous impression would create a mockery of sorts as all judgment debtors would take their own sweet time to pay the judgment debt when in actual fact the purpose of interest is to speed up and not to delay payments.
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> ... The Act certainly does not prohibit the payment of the arrears of interest due on the judgment debt beyond the six years after they became due as long as the act of recovery is made before the expiry of the prescribed six years.

Based on this reasoning, the learned judge accordingly held that the notice of demand under s. 218 of the Companies Act 1965 issued pursuant to a judgment in default obtained on 17 August 1987 to be in order. The notice was issued on 10 December 1992 for a judgment sum of RM73,019 together with interest at 8% per annum from 20 May 1985 amounting to RM12,016 calculated up to 10 December 1992 and costs. Counsel's submission that interest was chargeable only up to the six-year limit namely from 20 May 1985 to 19 May 1991 was rejected by the learned judge. The JD relied on *Emko* and thus contended that UMBC should have commenced the bankruptcy proceeding latest by 14 October 1993 that is, six years from the date of the

judgment. The JD thus went on to submit that since the BN was issued out on 24 January 1996, the act of recovery of the arrears of interest had been done after the limitation period of six years had expired. As such, UMBC cannot take action to recover the arrears of interest after 6 years had elapsed from the time the arrears of interest had become due. The BN is therefore defective as it contained the interest sums of RM106,863.04 and RM72,433.97 which are already time-barred in so far as action for recovery of the said sums is concerned.

The word "action" is defined in s. 2 of Act 254 as follows:

> "action" includes a suit or any other proceeding in a court of law;

Bearing in mind this definition and the learned judge's view in *Re Yamaha* at p. 320 that:

> ... there is only a thin line dividing the machinery of enforcing a judgment and the actual enforcement of such a judgment particularly so when s. 2 of the Limitation Act 1953 defines 'action' wide enough to include 'a suit or any other proceeding in a court of law'.

the issue of the commencement and cut-off date for the computation of interest and its recovery is made more complicated by the amendment to the Bankruptcy Act in 1992.

In *Re Undoh bin Asai* (Bankruptcy Petition K29(P)-96-94) Tee Ah Sing JC (as his Lordship then was) had to decide on the issue of whether the amount of interest had to be quantified up to the date of issue of the bankruptcy notice as required by s. 3(1)(i) of the Bankruptcy Act. In that case the bankruptcy notice dated 2 November 1993 stated that the judgment debtor had to pay the principal sum together with interest accruing thereon at a certain rate from 26 October 1993 to the date of full payment. The official assignee at the hearing of the bankruptcy petition pointed out that the interest on the judgment sum had not been quantified up to the date of issue of the bankruptcy notice as required by s. 3(1)(i) of the Bankruptcy Act 1967. The learned judicial commissioner held that the words contained in s. 3(1)(i) 'with interest quantified up to the date of the issue of the bankruptcy notice' which were added by the Bankruptcy (Amendment) Act 1992, were so plain and unambiguous that effect must be given to it. The failure by the judgment creditor to so give effect to the intention of Parliament rendered the bankruptcy notice one which did not fall within the ambit of s. 3(1)(i) of the Bankruptcy Act and was therefore a nullity *ab initio*.

The amendment begs the question of what the position would be if the calculation of the said interest from the date of accrual to the date of the BN is past the time limit of six years? What if the act of recovery is taken well past the six years?

In *Re Ngan Ching Wen Ex Parte: Moscow Narodny Bank Ltd* [1996] 2 CLJ 943, at p. 952, James Foong J held as follows:

> ... What preoccupies this Court is the claim for interest under item 2. The date is stated as 23 March 1986 to 7 October 1990. 23 March 1986 must therefore be the date when interest on the judgment debt became due. But under s. 6(3) of Limitation Act 1953, "no arrears of interest in respect of any judgment debt shall be recoverable after the expiration of six years from the date on which the interest became due." Calculating six years backwards commencing from 19 November 1992 (the date when the bankruptcy notice is dated) would be 18 November 1986. This would mean that no interest can be recoverable by the petitioning creditors before 18 November 1986. Nevertheless item 2 bears a claim for interest from a date before 18 November 1986. This makes the petitioning creditors' claim unenforceable on the interest on the period from 23 March 1986 to 18 November 1986.

In *Lougher v. Donovan* [1948] 2 All ER 11, 12, the Court of Appeal in interpreting a similar issue had this to say:

> The present appeal is solely on the question of whether the claim to an order extending the time for executing the 14 years old warrant was not barred by the Limitation Act 1939. Section 2(4) of that Act provides: "An action shall not be brought upon any judgment after the expiration of twelve years from the date on which the judgment became enforceable ...", and the definition of "action" in s. 31(1) of the Act reads as follows: "'Action' includes any proceeding in a court of law, including an ecclesiastical court." If the appeal succeeds the plaintiff will be left to take such other steps as he may be advised for the purpose of meeting the defendant's claim to a possessory title under the Act.
>
> In the argument below and before us reliance has been placed on behalf of the plaintiff on s. 5(4) of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920, which reads as follows:
>
> > Notwithstanding anything in s. 143 of the Country Courts Act, 1888, or in s. 1 of the Small Tenements Recovery Act, 1838, every warrant for delivery of possession of, or to enter and give possession of, any dwelling-house to which this Act applies, shall remain in force for three months from the day next after the last day named in the judgment or order for delivery of possession or ejectment, or, in the case of a warrant under the Small Tenements Recovery Act, 1838, from the date of the issue of the warrant, and in either case for such further period or periods, if any, as the court shall from time to time, whether before or after the expiration of such three months, direct.
>
> In our opinion, that sub-section is irrelevant. It cannot be interpreted as over-riding the Limitation Act, and we say no more about it.

The amendment to s. 3(1)(i) of the Bankruptcy Act was made following the decisions of the Federal Court in *Low Mun v. Chung Khiaw Bank Ltd* [1987] 2 CLJ 400; [1987] CLJ (Rep) 172 and *Ghazali bin Mat Noor v. Southern Bank Bhd & Ors* [1989] 2 CLJ 380; [1989] 1 CLJ (Rep) 35 where it was held that the demand for payment in the notice must not only be quantified but also be the correct sum owing as at the date of the notice. This amendment *via* Act A827 of 1992 came into force on 17 July 1992.

Prior to this amendment, in *Lim Boon Peng v. United Orient Leasing Co Bhd* [1991] 1 CLJ 445; [1991] 1 CLJ (Rep) 270, Mohamed Azmi SCJ in delivering the decision of the Supreme Court on the issue of whether a bankruptcy notice is valid if the quantified sum demanded in the body of the notice was as at 31 March 1988 and not as at the date of the issue of the notice on 8 June 1988, held as follows:

> Much had been said about the requirement that the amount quantified in the body of the notice must be the correct sum owing as at the date of the bankruptcy notice. The question in this appeal was, was a sum less than the amount that should be actually owing as at the date of the issue of the notice, an incorrect sum for the validity of the notice? Obviously not. It could be a lesser amount than the sum actually owing and capable of being made the subject of execution at the date of issue of the notice. In the present case, the quantified sum demanded for payment within seven days (up to 31 March 1988), though less than the amount actually owing on the date of issue of the bankruptcy notice (8 June 1988), was not a fatal defect. Where the date of issue of the notice by the registrar is the same as the date named in the notice by the creditor, which is the case here, then the maximum amount of interest accruing due that the judgment creditor could possibly quantify in the body of the bankruptcy notice was obviously the amount owing as at the date of issue of the notice. This is envisaged by this court in *Ghazali bin Mat Noor v. Southern Bank Bhd & Ors* ([1989] 2 CLJ 380; [1989] 1 CLJ (Rep) 35). In our opinion, where it would be possible to quantify the interest due up to the date of the issue of the bankruptcy notice, the solicitors for the judgment creditor in the preparation of the notice, could claim for their clients the quantified maximum sum in advance. However, if they elected for some reason to claim for a lesser sum, or where it is not possible to quantify the maximum sum, it could not by itself render the bankruptcy notice bad in law for the simple reason that it could not possibly affect the correctness of the sum actually owing as at the date of issue of the bankruptcy notice. As far as interest on judgment debt is concerned, the correct sum owing as at the date of issue of the bankruptcy notice (which in the present case was the same as the date named in the notice) could therefore either be the maximum quantified sum or any lesser sum that existed at an earlier date as a judgment debt and available for bankruptcy purposes.

> In the circumstances, the bankruptcy notice in this case was not bad in law merely because the quantified sum demanded in the body of the notice was as at 31 March 1988 and not as at the date of issue of the notice, on 8 June 1988. For reasons given above, we had dismissed this appeal with costs.

Now that there is an amendment to s. 3(1)(i), it ought to follow that this decision would no longer apply. However, the question remains as to whether a creditor can still elect to waive the claim for interest after a certain date that falls prior to the date of the bankruptcy notice, notwithstanding the amendment to s. 3(1)(i). It is, to my mind, something which the creditor is perfectly permitted to do provided that as held in the Supreme Court case of *Lim Boon Peng (supra)*, the sums claimed in the body of the bankruptcy notice leaves the judgment debtor with no doubt at all on the amount which the judgment debtor has to pay to avoid the commission of an act of bankruptcy under s. 3(1)(i). It is with this in mind that I say that the reasoning in the Supreme Court case of *Lim Boon Peng (supra)* is still applicable notwithstanding the amendment to s. 3(1)(i).

In this instant case, the interest had also not been calculated up to the date of the bankruptcy notice although it is shown to be "from 1 April 1986 till 24 January 1996" ie, the date stated to be due under the judgment till the date of the bankruptcy notice on 24 January 1996 in order to comply with the amended s. 3(1)(i) but there is also a note to state that "interest stops running after 14 October 1993", which is six years after the date of judgment as the judgment is dated 15 October 1987. To my mind, due to the way it is put in the bankruptcy notice, there now arises an ambiguity as to whether UMBC had calculated the interest up till 14 October 1993 or 24 January 1996.

I am inclined to follow the view of the Supreme Court and hold that notwithstanding the amendment to s. 3(1)(i), the BN is still valid if the judgment creditor chooses to claim interest for a shorter period and does not quantify the interest up to the date of the issue of the BN but up to the date to which he so chooses prior to the date of the notice or up till the date of limitation. The amendment to s. 3(1)(i) does not appear to have taken into consideration the provisions in s. 6(3) of Act 254. Neither has it taken into consideration the fact that the judgment creditor reserves the right to claim less. Thus the amendment worded as it is cannot be given a literal interpretation but should be read 'with "allowable" interest quantified up to the date of issue of the bankruptcy notice'. The limitation of an action shall be governed by the Limitation Act and cannot be extended by the mere inclusion of the words "up to the date of the bankruptcy notice" in some other Act without reference to the Limitation Act. If the words "Notwithstanding the provisions of the Limitation Act", had been added to the amendment to s. 3(1)(i), I would have no hesitation in holding that the interest must be

quantified up till the date of the BN and is claimable up till that date. However as it stands, the provision in s. 3(1)(i) must be read in the light of s. 6(3) of the Limitation Act. The interest should be claimable only up till the date before limitation sets in, six years from the date it became due. It is to be noted that the issue on limitation was not raised in all the three Supreme Court cases mentioned above.

The learned judge in *Wee Chow Yong* had held that it was six years from the date the interest was due and not the date of the judgment. Whereas the learned judge in *Re Yamaha* had in effect held that it was six years from the date of judgment notwithstanding that the interest had been running prior to the date of the judgment. In *Malaysian Soil,* judgment was obtained on 17 August 1987 and interest was due from 20 May 1985. The s. 218 notice was dated 10 December 1992 and interest had been calculated from 20 May 1985 until 10 December 1992 and then further interest after 10 December 1992, was also claimed. In *Re Ngan Ching Wen* the learned judge had tried to overcome the problem posed by the amendment to s. 3(1)(i) by calculating the amount of interest backwards commencing from the date of the BN. A closer reading of s. 6(3) of Act 254 may give us the answer. The phrase "... after the expiration of six years from the date on which the interest became due" would be the key. Hence I would agree with respect with the decision of the learned judge in *Wee Chow Yong*. In the instant case the maximum allowable amount of interest that can be claimed would be from 1 April 1986 until 31 March 1992. However, in going one step further based on *Malaysian Soil*, as the act of recovery was only taken after the six year limitation had set in, UMBC would not be entitled to claim the interest as embodied in the judgment of 15 October 1987.

Prior to 11 December 1986, O. 42 r. 12 provided that interest on every judgment debt shall be 8% per annum calculated from the date of judgment until the judgment is satisfied. By P.U.(A) 445/86 O. 42 r. 12 was amended to read as follows:

> Every judgment debt shall carry interest at the rate of 8 per centum per annum or as such other rate not exceeding the rate aforesaid as the court directs (unless the rate has been otherwise agreed upon between the parties), such interest to be calculated from the date of judgment until the judgment is satisfied.

After this amendment was incorporated into the Rules of the High Court, the amount of interest agreed upon by the parties in their various agreements were being ordered as the rates of interest to the judgment debts and most, if not all, were calculated from the date of default of payment in the first instance and stated to be running until the judgment is satisfied.

I hold that the claim of interest at the rate of interest as agreed to by the parties commencing from the date of default would be time barred by virtue of sub-s. 6(3) of Act 254 if claimed six years after the date of commencement. The judgment creditor would however be entitled to claim the 8% per annum on the judgment debt commencing from the date of judgment until the date of realisation as this is a mandatory provision. This would be the proper interpretation bearing in mind that, in as much as a judgment creditor who chooses to sit on his judgment must suffer the consequence of the period of limitation working against him, judgment debtors also cannot take their own sweet time to pay up the judgment debt. Hence where the action for recovery is taken within the limitation period the judgment creditor would be entitled to the higher agreed rate of interest but if he only takes action to recover the debt after six years he would only be allowed the maximum rate of 8% per annum on the principal sum due.

I would therefore agree with the learned judge in *Malaysian Soil* to this extent. I therefore allowed the appeal and set aside the order of the learned SAR dated 26 April 1996 as the act of recovery, ie, the issuance of the BN on 24 January 1996 was well past the date when limitation had set in. I had earlier indicated that I would deal with s. 131 in the later part of my judgment. As the issue on the amount of interest claimable is one of great import, I am of the view that s. 131 cannot be used to cure the defect which goes to the root of the BN. UMBC is therefore not entitled to recover the interest sums of RM106,863.04 and RM72,433.97. As such the BN is invalid and has to be struck out.